



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for an order directing the landlord to comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenants and an agent for the corporate landlord, RA ("agent") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

The only evidentiary issue relates to the one video file that the tenants stated they were not served with by the landlord. The agent affirmed that the video file was not served on the tenants since the tenants filed their application. As a result, I find the video file must be excluded in full as it was not served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Furthermore, the RTB Rules also require that the person served digital evidence must ensure that the recipient was able to open the digital evidence and review it, which in the matter before me was not done.

Only the evidence relevant to the issues and findings in this matter are described in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue

The email addresses for both parties were confirmed during the hearing. The parties were advised that the Decision will be emailed to both parties at the email addresses confirmed during the hearing.

Issues to be Decided

- Did the tenants provide sufficient evidence to prove that the landlord should be directed to comply with the Act, regulation, or tenancy agreement?
- Are the tenants entitled to the recovery of the cost of the filing fee?

Background and Evidence

The tenancy began in 2012. The building is a multi-unit building. The tenants write the following in their application:

Description:

a tenant is making false accusations against us, and the landlord is serving us Final Warning for making noise we bang pots and pans softly at 7pm for 20 seconds to thank the frontline workers for their work against Covid, and also it is our Religious practice to make noise to chase away sickness we have toned down our banging and shorten our time to no more than 20 seconds to be accommodating, and the tenant still complains that we upset her dog who has anxiety

[reproduced as written]

The tenants claim that the landlord is harassing them by given them warnings regarding complaints from other tenants. The tenants began to discuss an issue related to a “Fob” but were advised that their application did not mention a “Fob” and as a result, to ensure that their testimony was related to the reason listed above as the subject of their application for dispute resolution.

The tenants testified that they are looking to move but that a new rental unit is “hard to find”. The tenants summarized their dispute as wanting the landlord to be prevented from “harassing” them by issuing warning letters regarding noise complaints from other tenants.

A document submitted in evidence from the landlord, dated May 10, 2022, reads in part as follows and has been reduced in size to address the blurriness of the original document:

We have once again received noise complaints coming from your suite. The noise has been described as loud banging of pots and pans every night on your balcony. This noise issue is happening very frequently and is disturbing the quiet enjoyment of your neighbours.

Again, we ask that you make every effort to minimize the noise coming from your suite, particularly during quiet hours.

Please treat this notice as your final warning. Any further complaints will result in you being issued a 30-day notice to end your tenancy at Belmont Properties.

The contents indicated above, will be further discussed in the analysis section below.

The tenants testified that they have reduced their daily sounds to 5 or 6 seconds per day to celebrate the work of frontline workers who are working against COVID.

The agent denies any harassment of the tenants and stated that they are following up on their duty to address complaints from other tenants in the building regarding other tenants' right to quiet enjoyment under the Act.

Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

Firstly, I find the May 10, 2022 warning letter from the landlord is not a "harassment letter" as claimed by the tenants. In reaching this finding I have considered that the landlord was doing their lawful duty under section 28(b) of the Act, which applies and states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b)freedom from unreasonable disturbance;
[emphasis added]

Based on the above, I find the landlord was complying with section 28(b) of the Act by issuing a warning letter to the tenants before me based on a noise complaint received by another tenant in the building. As a result, I find the tenants have provided insufficient evidence to support any order against the landlord in this matter.

Based on the above, I **dismiss** the tenants' application without leave to reapply due to insufficient evidence.

In addition, I do not grant the filing fee as the tenant's claim has failed.

Should the tenants receive a Notice to End Tenancy in the future, their remedy would be to apply for dispute resolution to dispute any such notice within the timelines provided for under the Act.

Conclusion

The tenants' application fails in its entirety.

The filing fee is not granted as a result.

This Decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 28, 2022

Residential Tenancy Branch